

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DANIEL PASSERO,
Plaintiff,

v.

**1:17-CV-1296
(TJM/CFH)**

**MEREDITH SCHULZ, Washington County
APS Case Worker, ANDREW WILLIAMSON,
Washington County APS Case Worker,**

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

This *pro se* action, brought pursuant to 42 U.S.C. § 1983, alleges that Defendants, who are Adult Protective Services Case Workers assigned to assist Plaintiff with the issues caused by his disabilities, violated Plaintiff's Fifth and Fourteenth Amendment rights by failing to provide proper care and services. Plaintiff alleges that Defendants failed to assist him with housing and failed to insure he received proper medical care for his periodontitis, which led to more serious medical conditions. In his Amended Complaint Plaintiff also seeks relief pursuant to state law. The Court referred the action to the Hon. Christian F. Hummel, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation, dated August 6, 2018, recommends that the Court

dismiss Plaintiff's Amended Complaint without prejudice to filing any state-law claims he has in state court. See dkt. # 11. Magistrate Judge Hummel finds that Plaintiff has failed to state a claim for a violation of his Fourth Amendment equal protection or Fifth Amendment due process rights, even though he has been granted the opportunity to replead. Such claims, he concludes, should be dismissed with prejudice.

Plaintiff filed timely objections to the Report-Recommendation. See dkt. # 12. While Plaintiff's objections concentrate on Defendants' alleged failure to provide appropriate treatment for his periodontal disease, the Court finds that the objections could be considered a general objection to Magistrate Hummel's findings and will address them in that way. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

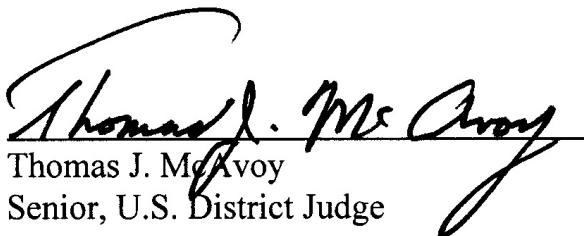
Having reviewed the record *de novo* and having considered the issues raised in the Plaintiffs' objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Hummel for the reasons stated in the Report-Recommendation.

It is therefore **ORDERED** that Plaintiff's objections to the Report-Recommendation of Magistrate Judge Hummel, dkt. # 12, are hereby OVERRULED. The Report-Recommendation, dkt. # 11, is hereby ACCEPTED and ADOPTED, and the Plaintiff's

Amended Complaint is hereby **DISMISSED** with prejudice as to Plaintiff's federal claims. Such dismissal, however, is without prejudice to the Plaintiff commencing an action in state court to address any state-law claims he has. The Court takes no position on whether Plaintiff could succeed on such claims. The Clerk of Court is directed to **CLOSE** the case.

IT IS SO ORDERED.

Dated: March 25, 2019



Thomas J. McAvoy
Senior, U.S. District Judge